

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

XAVIER JOEL VAZQUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civ. No. 16-2176 (ADC)

[Related to Crim. No. 14-230 (ADC)]

OPINION AND ORDER

Before the Court is petitioner Xavier Joel Vazquez's ("petitioner") motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. **ECF No. 1**. For the following reasons, petitioner's motion to vacate is **DENIED**.

In 2014, petitioner plead guilty to aiding and abetting a carjacking in violation of 18 U.S.C. §§ 2119 and 2, and to brandishing a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c). In 2016, petitioner moved to vacate part of his sentence, arguing that his § 924(c) conviction was unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). **ECF No. 1**. In a nutshell, petitioner opined that aiding and abetting a carjacking cannot be a crime of violence. *Id*; see also **ECF No. 5**.

This case was stayed pending the adjudication of *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). **ECF No. 6**. After *Dimaya's* adjudication, petitioner briefed the Court as to how the relevant case law had evolved during the pendency of the stay. **ECF No. 9**. Specifically, petitioner noted that the First Circuit Court of Appeals held in *United States v. Cruz-Rivera* that § 2119 carjacking

provision constitutes a crime of violence under § 924(c)'s force clause and pursuant to the holding in *United States v. García-Ortiz* that aiding and abetting a crime of violence, constitutes a crime of violence. 904 F.3d 63, 66 (1st Cir. 2018); 904 F.3d 102, 109 (1st Cir. 2018), cert. denied, 139 S. Ct. 1208 (2019). Thus, petitioner recognized that his § 2255 claims had been foreclosed by binding precedent. **ECF No. 9** at 2.

The Court agrees.

Petitioner's 28 U.S.C. § 2255 motion (**ECF No. 1**) is therefore **DENIED**. The motions at **ECF Nos. 4** and **5** are accordingly noted and moot. The Court declines to issue a certificate of appealability. The Clerk of Court shall enter judgment accordingly.

SO ORDERED.

In San Juan, Puerto Rico, on this 15th day of September, 2022.

S/AIDA M. DELGADO-COLÓN
United States District Judge